

**Matt Blunt**  
Governor



State of Missouri  
**OFFICE OF ADMINISTRATION**

**Michael N. Keathley**  
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**Donna M. White**  
Director  
Office of Supplier and Workforce  
Diversity

**Memorandum**

**To: Michael Keathley, Commissioner, Office of Administration**  
**From: Donna White, Director, Office of Supplier and Workforce Diversity**  
**Date: November 23<sup>rd</sup>, 2005**  
**Re: OSWD Policies and Procedures Manual**

Commissioner Keathley-

Please find attached an updated version of the Office of Supplier and Workforce Diversity's Policies and Procedures Manual, which have been reviewed by OSWD Staff to ensure that they comply with the requirements of Executive Order 05-30, signed by Governor Blunt on September 8<sup>th</sup>, 2005. Executive Order 05-30 established the Office of Supplier & Workforce Diversity (OSWD) and its primary function is to maintain and update changes to Missouri's Minority Business Enterprise (MBE) and Women Business Enterprise (WBE) Certification Program. These operating procedures lay out in detail the certification process to ensure that only eligible, for-profit businesses, which are owned and controlled in form and substance by one or more minorities and/or women, are entitled to be certified as MBEs and WBEs.

It is the stated policy and commitment of the Office of the Governor and the State Office of Administration (OA) to enhance the economic health and prosperity of the state by promoting the greater use of minority and women-owned businesses. It is the policy of OA to:

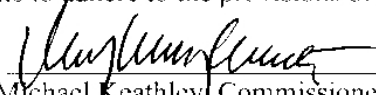
- Ensure nondiscrimination in the awarding and administration of state contracts;
- Ensure that the MBE/WBE Program is narrowly tailored and focused in accordance with all applicable federal, state and local laws;
- Ensure that only firms that fully meet eligibility standards are permitted to be certified as MBE/WBE firms;
- Assist in the removal of barriers to the participation of MBE/WBE firms in state contracts;
- Work to enhance the ability of minority and female-owned firms to compete successfully in the marketplace outside the MBE/WBE Program.

The Director of the Office of Supplier & Workforce Diversity is responsible for the successful implementation of all aspects of the MBE/WBE program. Implementation of the

certification program is accorded the same priority as compliance with all other legal obligations of this office.

OA/Division of Purchasing and Materials Management (PMM) shall annually set overall goals for the participation of MBE/WBE firms in state contracts. Those goals shall be analyzed and adjusted annually, if necessary.

OA/PMM will advise each contractor, within the language of their contract, that failure to carry out these requirements shall constitute a breach of contract and may result in termination of the contract, or any such remedy that OA deems appropriate. OA will require all employees and agents to adhere to the provisions of this chapter.

Signed:  Dated: 2/11/06  
Michael Keathley Commissioner  
Office of Administration

I. PURPOSE: The following phrases are used exclusively for the purpose of defining and administering the State of Missouri's MBE/WBE Certification Program as established by the Office of Administration:

- (A) "Certification": A determination made by the Director of OSD that a for-profit entity has met the eligibility requirements to be certified as a Minority Business Enterprise (MBE) or a Women Business Enterprise (WBE). OSD may, by declaration, accept the certifications issued by other accredited public bodies if their eligibility program conforms substantially to that of OSD.
- (B) "OA": The State of Missouri's State Office of Administration.
- (C) "Commissioner": The Commissioner of the State Office of Administration.
- (D) "Compliance": When used with respect to OA, means the correct implementation of the requirements of 37.020, RSMo, any relevant Executive Orders, and CSR 10-17.040. When used in reference to a contractor, subcontractor or supplier, "compliance" means that this firm has correctly implemented the requirements of this chapter, the relevant MBE/WBE program provisions of their state contract.
- (E) "Noncompliance": Used with respect to OA and other state agencies under Chapter 34 this means failure, either by the contractor, subcontractor or supplier to achieve the goals of M/WBE participation set forth in the contract language during the completion of that contract or other legal requirement.
- (F) "Contract": A legally binding relationship obligating a contractor, subcontractor or supplier to furnish goods or services (including, but not limited to, construction and professional services) and the buyer to pay for them. For the purposes of this chapter, either a lease or a subcontract may be considered a contract.
- (G) "Contractor": A person or firm which receives a contract directly from the state for any type of work: project design, design-build, or other professional services, including maintenance and repair.
- (H) "Subcontractor": A person or firm which does not bid on entire state contracts, but instead contracts a portion of the work from the primary contractor or another subcontractor to perform a variety of functions: construction (of any type, including maintenance and repair) work, project design, design-build, or other professional services.
- (I) "CSR": The Code of State Regulations for the State of Missouri, which is published annually by the Secretary of State's Office.

- (J) “Firm”: Used to refer to any private legal person or business entity which lawfully exists under the laws of the State of Missouri or its state of origin, and shall be deemed to include, but not limited to, a sole proprietorship, a corporation, a partnership, a limited partnership, a joint venture, a limited liability company (LLC), or a professional corporation. The term “firm” shall not include any “not-for-profit” corporation or other “not-for-profit” entity, nor any public governmental entity.
- (K) “Minority Business Enterprise (MBE)”: A for-profit business concern which:
1. Is at least fifty-one percent (51%) owned by one or more individual(s) who are a minority; or, in the case of a corporation or other business entity, in which fifty-one percent (51%) of the stock or membership is owned by one or more minorities; and
  2. Whose management and daily business operations are overseen by the minority individual(s) who own it.
  3. Is a sole-proprietorship, wholly owned and controlled by a minority.
- (L) “Minority” or “Minority Group”: Any individual or group who are citizens of the United States (or lawfully admitted permanent residents) who are in the following racial/ethnic groups:
- i: “Black Americans”: Includes persons having origins in any of the black racial groups of Africa;
  - ii: “Hispanic Americans”: Includes persons of Mexican, Puerto Rican, Cuban, Dominican, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race;
  - iii: “Native Americans”: Includes persons who are American Indian, Eskimos, Aleuts, or native Hawaiians;
  - iv: “Asian-Pacific Americans”: Includes persons whose origins are from Japan, China, Taiwan, Korea, Burma (Myanmar), Vietnam, Laos, Cambodia (Kampuchea), Thailand, Malaysia, Indonesia, the Philippines, Brunei, Samoa, Guam, the U.S. Trust Territories of the Pacific Islands (Republic of Palau), the Commonwealth of the Northern Mariana Islands, Macao, Figi, Tonga, Kirbati, Juvalu, Naura, Federated States of Micronesia, or Hong Kong;
  - v: “Asian-Indian Americans”: Includes persons whose origins are from India, Pakistan, Bangladesh, Bhutan, the Maldives Islands, Nepal or Sri Lanka;
  - vi: Any additional groups whose members are designated as socially and economically disadvantaged by the SBA, at such time as the SBA designation becomes effective
- (M) “Women Business Enterprise (WBE)” means a for-profit business concern which:

1. That is at least fifty-one percent (51%) owned by one or more individuals who are women; or, in the case of a corporation or other business entity, in which fifty-one percent (51%) of the stock or membership owned by one or more individuals who are women; and
  2. Whose management and daily business operations are controlled by the one or more women who own it;
  3. A sole-proprietorship, wholly owned and controlled by an woman.
- (N) "Owned": Having all the customary incidents of ownership, including the right of disposition, and sharing in all risks and profits commensurate with the degree of ownership interest.
- (O) "Principal place of business": Where the individual(s) who manage the day-to-day operations and make executive decisions are located and where all of its records are kept.
- (P) "Joint Venture": The association of an MBE/WBE firm with one or more other firms to carry out a single, for-profit business enterprise, for which the parties utilize their combined resources (property, capital, skills and knowledge) to complete the project and in which the MBE/WBE is responsible for a distinct, clearly defined portion of the work of the contract and whose share in the capital is commensurate with its ownership interest.
- (Q) "Sole Proprietorship": A business concern wholly owned and controlled by an individual minority and/or woman.

II. PURPOSE: To define procedures by which businesses can become certified as eligible MBEs/WBEs for the purposes of contracting with the state for goods and services.

Any individual, business, or organization desiring certification as an MBE and/or WBE shall submit a completed MBE/WBE Certification Application and the subsequent required documentation to OSWD. Any distortion, false statements or nondisclosure of information that is a material misrepresentation will, in ordinary instance, warrant summary denial of certification and may result in referral of the misleading entity to other agencies for consideration of other civil and/or criminal actions.

- (A) The minority and/or women owner(s) of the business must possess the resources and the requisite expertise to operate effectively in the firm's field of work.
- (B) Every applicant seeking MBE/WBE certification has the burden of demonstrating to OSWD, by a preponderance of the evidence, that it meets the requirements concerning group membership, ownership and control of the day-to-day operations of the business. As a part of this application process, each applicant must:
  1. Provide relevant information on the individual(s) who own and control the applicant firm that demonstrates that they are members of one or more minority groups and/or a woman. Each applicant firm, through one or more of the individuals owning and controlling that firm, must submit a signed and

notarized “Statement of Minority and/or Woman Status” on a form provided by OSD, certifying that each owner listed in the application is presumptively a minority or a woman or both.

2. The applicant enterprise must demonstrate that the majority ownership by a minority and/or a woman has not been acquired via a transferal from a non-minority, spouse, relative or employee within one year.
- (C) An MBE/WBE applicant whose principal place of business is located in another state must provide proof of certification by the certifying entity within that state which meets OSD certification standards. Certification by another state or outside organization does not automatically guarantee certification by OSD.
- (D) MBE/WBE applicants located in Missouri may apply for a rapid MBE/WBE certification through OSD based upon its certification by one of the local certifying entities recognized by this program. In such a case, the MBE/WBE must provide proof of that certification along with any additional documentation required by OSD. Again it must be stressed that certification by one of these local entities does not guarantee certification by OSD.
- (E) The determination of a firm’s eligibility to be certified as an MBE/WBE is a two-part process:
1. OSD requires the applicant to submit all relevant documentation deemed necessary to determine eligibility for certification as an MBE/WBE. Examples of required documentation may include, but are not limited to, proof of minority and/or female status, initial capital contribution information, income tax returns, partnership agreement, articles of incorporation, proof of ownership, etc.
  2. OSD also conducts an on-site review at the applicant’s place of business to verify their eligibility to be certified as an MBE/WBE. The state is not required to conduct on-site reviews if such a review would require that OSD incur unreasonable expenses to verify eligibility for certification. An example of an unreasonable expense would be travel outside the State of Missouri for an on-site review.
- (F) If an applicant firm is certified as an MBE/WBE, a letter of approval and the Certification Certificate shall be mailed to the business. The certification is then good for three (3) years from the date of approval.
- (G) When and if an applicant is denied certification, it will be notified in writing. The notification will include reason(s) for the denial, which may include but are not limited to, the following: an improperly filed application, a failure to provide requested information, failure to meet certification standards, inability to complete the certification review. The final decision regarding an applicant’s eligibility to become certified rests with the Director of OSD, based upon the supporting documentation and input from the certification staff.
- (H) Once the Director of OSD has issued a letter stating that an applicant firm has been denied MBE/WBE Certification, the business then has twenty-one (21) calendar days from the receipt of the denial letter to appeal that decision to the

Commissioner of OA. The Commissioner's decision is considered the final say in the matter.

- (I) Once a firm has been denied certification, they are ineligible to reapply for certification for a period of 180 days from the date of the denial.
- (J) Once they have received certification, it is the responsibility of the MBE/WBE to notify OSWD of any changes of fact set forth in the application including, but not limited to, company ownership, officers, address, organizational structure, areas of performance, etc. Failure to report any of these changes may result in the revocation of the firm's certification.

III. PURPOSE: To lay out the standards by which an applicant firm can be considered as eligible to be certified as a Minority Business Enterprise (MBE) or Women Business Enterprise (WBE).

Determination of Ownership by a Minority and/or Woman.

- (A) In determining whether a firm seeking certification as an MBE/WBE is truly owned by a minority and/or a woman, OSWD will consider the entirety of the facts in the record.
- (B) To be considered eligible to become an MBE/WBE, at least fifty-one percent (51%) of the firm must be owned by a minority and/or a woman.
  - 1. In the case of a corporation, such individuals must own at least 51% of the each class of voting stock outstanding and 51% of the aggregate of all stock outstanding.
  - 2. In the case of a partnership, a minority and/or a woman must own 51% of each class of partnership interest. Evidence of such ownership must be reflected in the firm's partnership agreement.
  - 3. In the case of a limited liability company (llc), a minority and/or a woman must own at least 51% of each class of member interest.
  - 4. In the case of a sole-proprietorship, a minority and/or a woman must own 100% of the assets.
- (C) Ownership and control of the enterprise by the minority and/or woman owner(s) must be real, substantial, and continuing, going beyond pro forma ownership of the firm as reflected in ownership documents. The minority and/or woman owner(s) must enjoy the customary incidents of ownership, and share in the risks and profits commensurate with their ownership interests, as demonstrated by the substance, not merely the form, of arrangements.
- (D) All securities which constitute ownership and/or control of the enterprise [for the purposes of establishing it as an MBE/WBE under these regulations] shall be held directly by the minority and/or woman owner(s). Except as provided in this paragraph, no securities or assets held in trust, or by any guardian for a minor, are considered as held by the minority and/or woman owner(s) in determining the

ownership of a [corporation] firm. However, securities or assets held in trust are regarded as held by a minority and/or a woman for purposes of determining ownership of the firm, if-

1. The beneficial owner of securities or assets held in trust is a minority and/or a woman, and the trustee is the same or another such individual; or
  2. The beneficial owner of a trust is a minority and/or a woman who, rather than the trustee, exercises effective control over the management, policy-making, and daily operational activities of the trust. Assets held in a revocable living trust may be counted only in the situation where the same minority and/or woman is the sole grantor, beneficiary, and trustee.
- (E) The contributions of capital and/or expertise by the minority and/or woman owner(s) to acquire their ownership interests [shall] must be real and substantial. Examples of insufficient contributions include a promise to contribute capital, participation in the firm's activities as an employee rather than a manager, or an unsecured note payable to the firm or an owner who is not a minority and/or a woman. Debt instruments from financial institutions or other organizations that lend funds in the normal course of their business would not render a firm ineligible, even if the debtor's ownership interest is security for the loan.
- (F) The following requirements apply in which expertise is relied upon as part of the contribution of a minority and/or woman owner to acquire ownership:
1. The owner's expertise must be -
    - A. In a specialized field;
    - B. In areas critical to the firm's operations;
    - C. Indispensable to the firm's potential success;
    - D. Specific to the type of work the firm performs; and is
    - E. Documented in the records of the firm. These records must clearly show the contribution of expertise and its value to the firm.
  2. The individual whose expertise is relied upon must also have a significant financial investment in the firm.
- (G) OSWD will always deem as held by a minority and/or woman, for purposes of determining ownership, all interests in a business or other assets obtained by the individual:
1. The result of a final property settlement or court order in a divorce or legal separation, provided that no term or condition of the agreement or divorce decree is inconsistent with this section; or
  2. Through inheritance, or otherwise because of the death of the former owner.



- (H) OSD will presume as not being held by a minority and/or a woman, for purposes of determining ownership, all interests in a business or other assets obtained by the individual as the result of a gift or transfer without adequate consideration, from any non-minority and/or non-female who is-
1. Involved in the same firm for which the individual is seeking certification, or is an affiliate of that firm;
  2. Involved in the same or a similar line of business; or who is
  3. Engaged in an ongoing business relationship with the firm, or an affiliate of the firm, for which the individual is seeking certification.
- (I) To overcome this presumption and permit those interests or assets to be counted, the minority and/or woman owner(s) must demonstrate to OSD, by clear and convincing evidence, that:
1. The gift or transfer to the minority and/or woman owner(s) was made for reasons other than obtaining certification as a MBE or WBE; and
  2. The minority and/or woman owner(s) actually controls the management, policy, and daily operations of the firm, notwithstanding the continuing participation of a non-minority and/or non-female who provided the gift or transfer.
- (J) OSD applies the following rules in situations in which marital assets form a basis for ownership of a firm:
1. When marital assets (other than the assets of the business in question), held jointly or as community property by both spouses, are used to acquire the ownership interest asserted by one spouse, OSD will deem the ownership interest in the firm to have been acquired by that spouse with his or her own individual resources, provided that the other spouse irrevocably renounces and transfers all rights in the ownership interest in the manner sanctioned by the laws of the state in which either spouse or the firm is domiciled.
  2. A copy of the document legally transferring and renouncing the other spouse's rights in the jointly-held or community assets used to acquire an ownership interest in the firm must be included as part of the firm's application for MBE or WBE certification.
- (K) OSD will consider the following factors in determining the ownership of a firm. However, OSD must not regard a contribution of capital as failing to be real and substantial, or find a firm ineligible, solely because-
1. A minority and/or woman owner(s) acquired his or her ownership interest as the result of a gift or transfer without adequate consideration, other than the types set forth in Paragraph H of this section;
  2. There is a provision for the co-signature of a spouse who is not a minority and/or a woman on financing agreements, contracts for the purchase or sale of real or personal property, bank signature cards, or other documents; or

3. Ownership of the firm in question or its assets is transferred for adequate consideration from a spouse who is not a minority and/or a woman to a spouse who is, in fact, such an individual. In this case, OSD must give particularly close and careful scrutiny to the ownership and control of a firm to ensure that it is owned and controlled, in substance as well as in form, by a minority or woman.

IV. PURPOSE: Laying out the standards by which OSD determines whether the minority and/or woman owner(s) control the daily operations of the firm and are responsible for making management decisions on a variety of issues related to the efficient running of the business.

- (A) In determining whether the minority and/or woman owner(s) control the daily operations of an applicant firm, OSD will consider the entirety of the facts in the record.
- (B) Only an independent business may apply to be certified as an MBE or WBE. An independent business is one in which the viability of the firm does not depend on its relationship with another firm or firms.
  1. In determining whether a potential MBE or WBE is an independent business, OSD will consider, based upon its submitted documentation, its relationships with non-MBEs/non-WBEs in areas such as personnel, facilities, equipment, financial and/or bonding support, and other such resources.
  2. OSD will also consider any relationships between recent employer/employee of the potential MBE or WBE and any non-MBEs or non-WBEs which may compromise the applicant firm's potential independence.
- (C) A MBE or WBE firm must not be subject to any formal or informal restrictions that limit the customary discretion of the minority and/or woman owner(s). There can be no restrictions through corporate charter provisions, by-law provisions, contracts or any other formal or informal devices (e.g., cumulative voting rights, voting powers attached to different classes of stock, employment contracts, requirements for concurrence by non-minority or non-female partners, conditions precedent or subsequent, executor agreements, voting trusts, restrictions on or assignments of voting rights) that prevent the minority or woman owners, without the cooperation or vote of any non-minority or non-female, from making any business decision of the firm. This paragraph does not preclude a spousal co-signature on documents
- (D) The minority and/or woman owner(s) [shall] must possess the power to [make] direct or cause the direction of the management and policies of the firm and to make day-to-day as well as long-term decisions on matters of management, policy and operations.
  1. A minority and/or woman owner(s) must hold the highest official position in the company (e.g., chief executive officer or president).
  2. In a corporation, the minority and/or woman owner(s) must control the board of directors.

3. In a partnership, one or more of the minority and/or woman owner(s) must serve as general partners, with control over all partnership decisions.
  4. In an LLC, the minority and/or woman owner(s) must be the managing member(s).
- (E) Individuals who are not a minority and/or a female may be involved in a MBE or WBE as owners, managers, employees, stockholders, officers, and/or directors. Such individuals must not, however, possess or exercise the power to control the firm, or be disproportionately responsible for the daily operations of the firm.
- (F) The minority and/or woman owner(s) must have an overall understanding of, and managerial and technical competence/experience directly related to, the type of business in which the firm is engaged and the firm's operations. The minority and/or woman owner(s) must have the ability to evaluate information presented by other participants in the firm's activities and be able to use this information to make independent decisions concerning the firm's daily operations, management, and policymaking. Generally, expertise limited to office management, administration, or bookkeeping functions unrelated to the principal business activities of the firm is insufficient to demonstrate competency of the business's area of expertise and control over its daily operations.
- (G) If state or local law requires the business to maintain a particular license(s) or other credential(s) in order to own and/or operate a certain type of firm, then the minority and/or woman owner(s) who exercise majority control of a potential MBE or WBE of that type must possess the required license(s) or credential(s). If state or local law does not require those persons to have such a license(s) or credential(s) in order to own and/or operate such a firm, OSD will not deny certification solely on the grounds that the person lacks such license(s) or credential(s). However, OSD will take into account the absence of such license(s) or credential(s) as one factor in determining whether the minority or woman owner(s) actually exercise daily control over the firm.
- (H) OSD will consider differences in remuneration between the minority and/or female owner(s) and participants in the firm in determining whether to certify a firm as an MBE or WBE. Such consideration shall be in the context of the duties of the person(s) involved, normal industry practices, the firm's practices and policies concerning the reinvestment of income, and any other explanations for the differences offered by the firm. Based upon the evidence, OSD will make a determination about whether a firm is controlled by its minority and/or woman owner(s), even though that owner(s) remuneration may be lower than that of some other participants in the firm.

In a case where a non-minority or non-female owner(s) has formerly controlled the firm, and a minority and/or a woman owner(s) now controls it, OSD may consider the difference between the remuneration of the former and current controller of the firm as a factor in determining who exercises true control over the firm, particularly when the non-minority or non-female owner(s) remains involved with the firm and continues to receive greater compensation than the minority and/or female owner(s).

- (I) In order to be viewed as controlling a firm, a minority and/or female owner(s) cannot engage in outside employment or other business interests that could conflict with the management of the firm or prevent them from devoting sufficient time and attention to the affairs of the firm to control its daily activities. For example, absentee ownership of a business and part-time work in a full-time firm is viewed as not exercising effective daily control over the firm.
- (J) A minority and/or woman owner(s) may control a firm even though one or more of the individual's immediate family members (who themselves are not minorities and/or women) participate in the firm as a manager, employee, owner, or in some other capacity. Except as otherwise provided in this paragraph, OSD will make a judgment about how much control the minority and/or woman owner(s) exercises vis-à-vis other persons involved in the business, without regard as to whether or not those other persons are immediate family members.

If OSD cannot determine that the minority and/or woman owner(s) - as distinct from the family as a whole - actually control the firm, then the minority and/or female owner(s) have failed to meet their burden of proof concerning control of the business, even though they may participate significantly in the firm's activities.

- (K) In situations where a firm was formerly owned and/or controlled by a non-minority or non-female (whether or not an immediate family member) who still remains involved in the firm in some capacity but where the ownership and/or control was transferred to a minority and/or a woman, that minority and/or woman owner(s) now operating the firm must demonstrate to OSD, by clear and convincing evidence, that:
  - 1. The transfer of ownership and/or control to the minority and/or woman owner(s) was made for reasons other than to obtain certification as a MBE or WBE; and
  - 2. The minority and/or woman owner(s) actually controls the management, policy and daily operations of the firm, notwithstanding the continuing participation of a non-minority or non-female who formerly owned and/or controlled the firm.
- (L) In determining whether a firm is actually controlled by its minority and/or woman owner(s), OSD must consider whether the firm owns equipment necessary to perform its work. However, if it is discovered that the firm leases, rather than owns, such equipment, where leasing equipment is a normal industry practice and the lease does not involve a relationship with a prime contractor or other party that compromises the independence of the firm, OSD will not penalize the firm for its use of leased equipment towards its ability to be certified as a MBE/WBE.
- (M) A business operating under a franchise or license agreement may be certified if it meets the standards in this subpart and the franchiser or licensor is not affiliated with that franchisee or licensee. In determining whether such an affiliation exists, OSD should generally not consider the restraints relating to standardized quality, advertising, accounting format, and other provisions imposed on the franchisee or licensee by the franchise agreement or license, provided that the franchisee or licensee has the right to profit from its efforts and bears the risk of loss commensurate with ownership. Alternatively, even though a franchisee or licensee may not be controlled by virtue of such provisions in the franchise agreement or

license, affiliation could arise through other means, such as common management or excessive restrictions on the sale or transfer of the franchise interest or license.

- (N) In order for a partnership to be deemed controlled by a minority and/or a woman, any non-minority or non-female partner(s) must be incapable of, without the specific written concurrence of the minority and/or female partner(s), contractually binding the partnership or subjecting it to contractor liability.
- (O) In the course of the daily operation of the business, the minority and/or woman owner(s) controlling a firm may utilize an employee leasing company. The use of such a company does not preclude the minority and/or woman owner(s) from controlling their firm if they continue to maintain an employer-employee relationship with the leased employees. This requires the minority and/or woman owner(s) being responsible for hiring, firing, training, assigning, and otherwise controlling the on-the-job activities of the employees, as well as ultimate responsibility for wage and tax obligations related to the employees.

V. PURPOSE: To define additional rules that may affect the ability of an applicant firm to be certified as an MBE/WBE.

- (A) OSD will evaluate the eligibility of a firm on the basis of present circumstances and will not refuse to certify a firm based solely on historical information indicating a lack of ownership or control of the firm by a minority and/or a woman at some time in the past, if the firm currently meets its standards for ownership and control by such an individual. Additionally, OSD will not refuse to certify a firm solely on the basis that it is a newly-formed firm with no history of ownership by a minority and/or a female.
- (B) Firms seeking MBE/WBE certification shall cooperate fully with OSD requests for information relevant to the certification process. Failure or refusal to provide such information is grounds for a denial or revocation of certification.
- (C) Only for-profit firms are eligible to apply for certification as MBEs/WBEs. Not-for-profit organizations, even though they may be controlled by a minority and/or a woman, are ineligible to be certified as MBEs/WBEs.
- (D) For a firm to be considered eligible for MBE/WBE Certification, it must be owned and operated by individuals who are a minority and/or a woman. Except as provided in the following subsection, a firm that is not owned by such individuals, but is instead owned by another firm, even that firm is a certified MBE/WBE, is ineligible to be certified as an MBE/WBE.
  - 1. If the minority and/or woman owner(s) possess and control the applicant firm through a parent or holding company, established for tax, capitalization or other purposes consistent with industry practices, and the parent or holding company, in turn, owns and controls an operating subsidiary, you may certify the subsidiary if it otherwise meets all OSD requirements of this subpart. In this situation, the individual owners and operators of the parent or holding company are deemed to control the subsidiary through the parent or holding company.
  - 2. OSD may certify such a subsidiary as an MBE/WBE if and only if the

subsidiary is fifty-one percent (51%) cumulatively owned by a minority and/or a woman. The following examples illustrate how the provision for cumulative ownership works:

EXAMPLE 1: A minority and/or a woman owns 100% of a holding company, which, in turn, has a wholly-owned subsidiary. The subsidiary may be certified as an MBE/WBE, if it meets all other OSD requirements.

EXAMPLE 2: A minority and/or a woman owns 100% of a holding company, which, in turn, owns fifty-one percent (51%) of a subsidiary. The subsidiary may be certified as an MBE/WBE, if it meets all other OSD requirements.

EXAMPLE 3: A minority and/or a woman owns eighty percent (80%) of a holding company, which, in turn, owns seventy percent (70%) of a subsidiary. In this case, the cumulative ownership of the subsidiary by a minority and/or a woman is fifty-six percent ( $80\% \text{ of } 70\% = 56\%$ ). This is more than the fifty-one percent (51%) threshold, so the subsidiary may be certified as an MBE/WBE, if all other OSD requirements are met.

EXAMPLE 4: Similar to Examples 2 and 3, however in this case an individual other than a minority and/or a woman serves as the owner of the parent or holding company which, in turn, controls the subsidiary.

Even though the subsidiary may be owned and controlled by a minority and/or a woman, the holding or parent company is not, which in turn means that it fails to meet the OSD's ownership and control requirements and cannot be certified as an MBE/WBE.

EXAMPLE 5: A minority and/or a woman owns sixty percent (60%) of the holding company, which, in turn, owns fifty-one percent (51%) of a subsidiary. In this case, the cumulative ownership of the subsidiary by a minority and/or a woman is thirty-one percent ( $60\% \text{ of } 51\% = 31\%$ ). This is less than the fifty-one percent (51%) threshold, so the subsidiary cannot be certified as an MBE/WBE.

- (E) Recognition of a business as a separate entity for tax or corporate purposes is not necessarily sufficient to demonstrate that a firm is an independent business, owned and controlled by a minority and/or a woman.
- (F) The fact that a firm may be owned by an Indian tribe, an Alaska Native Corporation, or a Native Hawaiian organization as an entity, rather than by Indians, Alaskan Natives, or Native Hawaiians as individuals, does not preclude it from consideration for certification as an MBE/WBE. Such a firm must still be controlled and managed by a minority and/or a woman.

## VI: Additional Rules Governing the Certification of Joint Ventures as MBEs/WBEs.

- (a) Any business that is certified as an MBE/WBE which is participating in and seeking the certification of a joint venture must submit a completed application as well as all relevant business documentation required by OSD for review.
- (b) As stated above, OSD may require the applicant to submit additional documentation deemed necessary to determine whether the joint venture is, in fact, eligible for certification. Examples of such required documentation may include, but are not limited to, a copy of the joint venture agreement and/or copy of certification certificate issued to the MBE/WBE participant.
- (c) In order for a joint venture to be certified, it must be demonstrated that the MBE/WBE partner will be responsible for a clearly defined portion of the work to be performed and also that the MBE/WBE will maintain majority ownership and share in the control, management responsibilities, risk and profits of the joint venture.
- (d) Once it has become certified, the joint venture certification is valid for a period not to exceed the terms of the contract for which the joint venture was formed.
- (e) Any proposed changes to the joint venture agreement must be filed with and approved by OSD prior to their implementation if they wish to maintain certification.

#### VII: Additional Rules Regarding Certification or Recertification as an MBE/WBE.

- (a) All certifications issued by OSD, with the exception of joint ventures, shall be effective for a period not to exceed three (3) years.
- (b) Any firm certified as an MBE or WBE must request recertification by submitting a recertification application prior to the expiration date of their current certification.
- (c) If an application for recertification is not submitted prior to the expiration date of the current certification, the business will then be removed from the active list of certified MBE/WBE vendors. In order to become recertified after the expiration date of the original certification, the applicant must submit the recertification application with an explanation for the delay in reapplying.

#### VIII: Additional Rules Governing the Revocation of a Business's MBE/WBE Status.

- (A) There are several instances under which OSD may consider, as an administrative penalty, the revocation of a business's MBE/WBE Certification. The following list, while not intended to be all inclusive, can serve as a guideline for determining if revocation of a firm's MBE/WBE status is an appropriate administrative penalty:
  - 1. A change in the organizational structure and/or actual ownership of the business entity that would make it ineligible for MBE/WBE status;
  - 2. The revocation of a business's MBE/WBE Certification by another of the local certifying entities; or

3. The discovery that some of the information provided by the business on applications, bids etc. has been falsified or intentionally misrepresented.

#### IX: Additional Rules Governing a Firm's Right to Appeal and/or Challenge the Decision of OSWD

- (A) Once it has been decided by the Director of OSWD that a firm should either be denied certification or have their existing MBE/WBE certification revoked, the applicant then has the right to appeal such actions by requesting that determination be reviewed by the Commissioner of the State Office of Administration (OA) or his/her designee.
- (B) Any request for review must be submitted in writing and filed with the Commissioner's Office within twenty-one (21) calendar days of the firm's receipt of the denial letter. The request must set forth specific reasons why the applicant firm believes that the denial or revocation should be reversed.
- (C) The ultimate decision of the Commissioner's Office is considered the final say in the matter and a letter stating that decision is mailed to all parties involved.
- (D) If it is determined that a business's denial of certification or revocation of their MBE/WBE status should be sustained, then the firm is ineligible to reapply for certification for a period of 180 days from the date of the decision.
- (E) If there are third parties who have reason to believe that an enterprise has been wrongfully denied and/or granted certification, either as an MBE/WBE or joint venture, they may file a third party challenge with OSWD. Challenges by third parties are not considered an appeal.
  1. Any third party challenge must be submitted in writing along with supporting evidence and documentation in sufficient detail to support the allegation(s). OSWD may require additional documentation from the challenger if what was submitted was insufficient.
  2. The third party challenge must contain the name, address, telephone number and signature of the challenger and will not be considered confidential for the purposes of challenging a firm's certification or denial as an MBE/WBE.
  3. The firm in question will be notified in writing that a challenge to their status has been received by OSWD and that the office will investigate the challenge and issue a written decision.

#### X: Additional Rules Governing Administrative Penalties for Violations of the MBE/WBE Program, as well as for Claims and/or Conduct that are Deemed to be Fraudulent.

- (A) The State Office of Administration (OA) will initiate compliance procedures, enforcement actions and/or administrative sanctions available to it under Missouri civil, criminal, and contract law in instances where businesses participating in the State of Missouri's MBE/WBE Program are found to be in violation of the standards and practices of the program or whose claims and/or conduct has been deemed to be fraudulent. These administrative remedies may include, but are not limited to,



suspension of the business's certification, termination of contracts in which it is participating or debarment from the program. In addition, any violations of the MBE/WBE Program as well as suspected false and/or misleading conduct by a participating firm will be reported by OA to Missouri Attorney General's Office.